(2013) 11 KAR CK 0209

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 1498 of 2009

The Branch Manager Oriental Insurance Co. Ltd. APPELLANT

Vs

Smt. Chikkamma and Others RESPONDENT

Date of Decision : 25-11-2013

Acts Referred:

Citation : (2013) 11 KAR CK 0209

Hon'ble Judges : B.S. Indrakala, J

Bench : Single Bench

Advocate : A.N. Krishna Swamy, for the Appellant; G.P. Suresha, Advocate for R-1 to 4 in First Appeal No. 1498/2009 and for R-1 to 2 in First Appeal No. 4620/2008, for the Respondent

Final Decision : Allowed

Judgement

B.S. Indrakala, J.—All these appeals are preferred by the insurer against the judgment and award dated 20.02.2008 passed in MVC No. 90/2006 and common judgment and award dated 31.01.2008 passed in MVC Nos. 91/2006, 92/2006, 93/2006, 96/2006 and 97/2006 respectively on the file of Civil Judge (Sr. Div.) & JMFC and MACT, K.R. Pet. It is the case of the claimants in all these appeals that on 16.4.2001 at 5.15 PM while they were travelling from Menasahalli Koppalu Village to their native place via Channarayapatna Kikkeri Road in the lorry bearing Regn. No. KA. 13/4215 after attending a marriage function, when the lorry was proceeding near Tulasigate, the driver of the lorry was driving the same in rash manner and as such, he lost control over the same and the lorry toppled, as a result of which the claimants in all the cases sustained grievous injuries; they were shifted to Government Hospital, Hassan for treatment; they incurred substantial expenses for treatment; they also suffered disabilities etc and in the circumstances, all of them sought compensation from the owner and insurer of the said lorry which was involved in the accident.

2. The owner of the lorry remained absent before the tribunal while the insurer denied the entire case of the claimants and specifically pleaded that the liability if

any, is subject to the terms and conditions of the policy and has further pleaded that as the claimants were passengers in a goods vehicle, the insurance company is not liable to indemnify the owner of the vehicle to any extent.

3. To prove their case, the claimants in all the cases got themselves examined as PW 1 in each case and also got marked documents like true copy of the FIR and wound certificate, and the claimant in MVC No. 96/2006 also got marked the notice given by the police and all the medical bills report etc., in all as Ex. P.1 to P.9. On behalf of the respondents, one of the official of the insurance company is examined as RW1 and the policy of insurance is got marked as Ex. R.1.

4. The tribunal by considering the said evidence so placed on record, deemed it fit to award a sum of Rs. 5000/-, Rs. 2000/-, Rs. 4000/-, Rs. 21500/-, Rs. 4000/- and Rs. 4000/- respectively in MVC Nos. 90, 91, 92, 93, 96 and 97/2006 with interest at the rate of 6% p.a. from the date of petition till realisation and the insurer was directed to satisfy the award so passed and thereafter to recover the same from the owner of the vehicle viz., 1st respondent.

5. Aggrieved by the said judgment and award, the insurer is in appeal in all the cases interalia contending amongst other grounds that the accident occurred while the victims were travelling in the lorry which was meant to carry goods only, as there was violation of the terms and conditions of the insurance policy the insurer is not liable to indemnify the owner of the vehicle to any extent.

6. Learned counsel for the insurer/appellant submitted that another case arising out of the same accident in MVC No. 832/2001 was disposed of on the file of the Addl. Civil Judge (Sr. Dvn.) & Member, MACT, Srirangapatna and challenged in MFA 9134/2004 before this Court, the award passed therein was set-aside by exonerating the liability of the insurance company to indemnify the owner of the vehicle and the said decision is squarely applicable to the facts of the present case also. Admittedly, the claimants were passengers in a goods vehicle and it is not their case that they were so travelling in the said vehicle as owners of the goods and on the contrary it is their specific case that they were returning to their native place after attending a marriage. Hence, there is clear violation of the terms and conditions of the policy of insurance and the MACT is not justified in fastening the liability on the appellant/insurance company and to recover the same from the said owner thereafter. Thus, the appeals filed by the insurance company are entitled to be allowed. Hence, the following:

ORDER

All the appeals are allowed. The impugned judgment and award dated 20.02.2008 passed in MVC No. 90/2006 and dated 31.01.2008 passed in MVC Nos. 91/2006, 92/2006, 93/2006, 96/2006 and 97/2006 respectively on the file of Civil Judge (Sr. Dvn.) & JMFC and MACT, K.R. Pet fastening the liability on the appellant to pay compensation are set-aside. However, the respondent/owner of the vehicle is held liable to satisfy the award so passed by the tribunal.

The amount in deposit is ordered to be refunded to the appellant/insurance company.

